

ORDER NO. 2034

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Competitive Product Prices  
Priority Mail Express, Priority Mail &  
First-Class Package Service  
Priority Mail Express, Priority Mail &  
First-Class Package Service Contract 2

Docket No. MC2014-22

Competitive Product Prices  
Priority Mail Express, Priority Mail &  
First-Class Package Service Contract 2  
(MC2014-22)  
Negotiated Service Agreement

Docket No. CP2014-37

ORDER ADDING PRIORITY MAIL EXPRESS, PRIORITY MAIL, AND FIRST-CLASS  
PACKAGE SERVICE CONTRACT 2  
TO THE COMPETITIVE PRODUCT LIST

(Issued March 27, 2014)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2014 (Request).

## II. BACKGROUND

On March 18, 2014, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. § 3020.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, and a certification of compliance with 39 U.S.C. § 3633(a). In addition, the Postal Service submitted an application for non-public treatment of materials requesting that redacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. Request, Attachment F.<sup>2</sup> The contract is scheduled to be in effect for three years. Request, Attachment B at 4.

On March 19, 2014, the Commission issued an order establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

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<sup>2</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>3</sup> Order No. 2027, Notice and Order Concerning the Addition of Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 to the Competitive Product List, March 19, 2014.

### III. COMMENTS

The Public Representative filed comments on March 26, 2014.<sup>4</sup> No other interested person filed comments. The Public Representative states that he has reviewed the Request, contract, statement of supporting justification, proposed revisions to the Mail Classification Schedule, and the financial data filed under seal. PR Comments at 2. Based on that review, he concludes that the contract should be added to the competitive product list and that the prices under the contract should generate sufficient revenue during the first contract year to cover costs and otherwise meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 2. He believes the annual rate adjustment provision for negotiated prices will help the contract continue to meet the requirements of 39 U.S.C. § 3633(a) in subsequent years and notes that the Commission will have an opportunity to review the contract's financial results for compliance in its Annual Compliance Determination (ACD). *Id.* at 2-3.

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms

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<sup>4</sup> Public Representative Comments on Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 to the Competitive Product List, March 26, 2014 (PR Comments).

offering similar products. 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. § 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, contributes

to the Postal Service's institutional costs, and does not cause any market dominant products to subsidize competitive products. 39 U.S.C. § 3633(a); 39 C.F.R. § 3015.5.

As part of its Request, the Postal Service submitted a certified statement that the contract complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment E. In addition, the Postal Service filed supporting revenue and cost data showing that the contract is expected to cover its costs. Based on a review of the financial workpapers, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). Additionally, it finds that the contract should not result in competitive products being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). It also finds the contract should have a positive effect on the contribution of competitive products to institutional costs, in furtherance of 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with the section 3633(a) provisions applicable to rates for competitive products.

The contract contains a price adjustment provision that increases contract rates during subsequent contract years. Request, Attachment B at 3. The adjustment provision increases the likelihood that prices will cover attributable costs during subsequent contract years. The Commission will review the contract's cost coverage in the Commission's ACD to ensure that rates continue to cover costs during subsequent years.

*Other considerations.* By its terms, the contract becomes effective one business day after the date that the Commission issues all necessary regulatory approvals. *Id.* at 4. The contract is scheduled to expire three years from the effective date, unless, among other things, either party terminates the contract with 90 days' written notice to the other party or it is renewed by mutual agreement.<sup>5</sup>

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<sup>5</sup> *Id.* Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within 7 days of the contract expiring.<sup>6</sup> During the extension periods, prices will be adjusted as described in the contract. Request, Attachment B at 4. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period, making it likely that the contract will continue to cover its attributable costs; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone or rate category associated with the contract.

In conclusion, the Commission approves Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 as a new product. The revision to the competitive product list appears below the signature of this Order and is effective immediately.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 (MC2014-22 and CP2014-37) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the

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<sup>6</sup> *Id.* As the Commission noted in Order No. 1773, the Postal Service clarified that substantially identical language in Priority Mail Contract 60 contemplates the Postal Service filing any notices of extension with the Commission *at least one week prior to* the expiration of the contract, as opposed to the instant contract's "within at least seven (7) days of the contract's expiration date." See Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; see also Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2.

competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

2. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled expiration date as discussed in this Order.
3. Within 30 days after the instant contract terminates, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone or rate category associated with the contract.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix A to 39 C.F.R. part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission's order in Docket Nos. MC2014-22 and CP2014-37. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.



**Part B—Competitive Products**

2000 Competitive Product List

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Negotiated Service Agreements

Domestic

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Priority Mail Express, Priority Mail & First-Class Package Service

Contract 2

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